

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DAISY TORRES,

16 CV 1662 (PKC)(PK)

Plaintiff,

**VERIFIED ANSWER**

-against-

AMERICAN AIRLINES, INC., and AMERICAN  
AIRLINES GROUP, INC.

Defendants.  
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Defendants, AMERICAN AIRLINES, INC., and AMERICAN AIRLINES GROUP, INC.

by and through their attorneys, **RUTHERFORD & CHRISTIE, LLP**, as and for their Answer to the Complaint of the plaintiff herein, respectfully set forth as follows, upon information and belief:

**THE PARTIES**

FIRST: Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated "1" in the plaintiff's Complaint.

SECOND: Admit the allegations contained in the paragraph designated as "2" of the plaintiff's Complaint.

THIRD: Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as "3" of the plaintiff's Complaint, and leave all questions of law to this Honorable Court.

FOURTH: Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “4” of the plaintiff’s Complaint.

**THE UNDERLYING FACTS**

FIFTH: Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “5” of the plaintiff’s Complaint.

SIXTH: Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “6” of the plaintiff’s Complaint, and leave all questions of law to this Honorable Court.

SEVENTH: Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “7” of the plaintiff’s Complaint.

EIGHTH: Deny each and every allegation contained in the paragraph designated as “8,” of the plaintiff’s Complaint.

NINTH: Deny each and every allegation contained in the paragraph designated as “9,” of the plaintiff’s Complaint.

**AS AND FOR A FIRST CLAIM FOR RELIEF**

TENTH: In response to the paragraph designated as “10,” defendants repeats, reiterate and reallege each and every response to the plaintiff’s Complaint contained in paragraphs “1” through “9” above with the same force and effect as if set forth herein at length.

ELEVENTH: Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “11” of the plaintiff’s Complaint.

TWELFTH: Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “12” of the plaintiff’s Complaint, and leave all questions of law to this Honorable Court.

THIRTEENTH: Deny each and every allegation contained in the paragraph designated as “13” of the plaintiff’s Complaint.

FOURTEENTH: Deny each and every allegation contained in the paragraph designated as “14” of the plaintiff’s Complaint.

FIFTEENTH: Deny each and every allegation contained in the paragraph designated as “15” of the plaintiff’s Complaint.

SIXTEENTH: Deny each and every allegation contained in the paragraph designated as “16” of the plaintiff’s Complaint.

**AS AND FOR A SECOND CLAIM FOR RELIEF**

SEVENTEENTH: In response to the paragraph designated as “17,” defendants repeat, reiterate and reallege each and every response to the plaintiff’s Complaint contained in paragraphs “1” through “16” above with the same force and effect as if set forth herein at length.

EIGHTEENTH: Deny each and every allegation contained in the paragraph designated as “18” of the plaintiff’s Complaint.

NINETEENTH: Deny each and every allegation contained in the paragraph designated as “19” of the plaintiff’s Complaint.

TWENTIETH: Deny each and every allegation contained in the paragraph designated as “20” of the plaintiff’s Complaint.



**AS AND FOR A FIRST SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-FIRST: Upon information and belief, that whatever damages the plaintiff may have sustained at the time and place mentioned in the Complaint were caused in whole or in part by the culpable conduct of said plaintiff. The amount of damages recovered, if any, shall therefore be diminished in the proportion to which said culpable conduct, attributable to Plaintiff, bears to the culpable conduct which caused said damages.

**AS AND FOR A SECOND SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-SECOND: If the injuries and damages were sustained by the plaintiff at the time and place and in the manner alleged in the Complaint, such damages and injuries are attributable, in whole or in part, to the culpable conduct of third parties, and if any damages are recoverable against the defendant, the amount of such damages shall be diminished in the proportion that the culpable conduct attributable to third parties bears to the culpable conduct which caused the damages pursuant to CPLR §1601.

**AS AND FOR A THIRD SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-THIRD: That the Complaint herein fails to state a cause of action upon which relief may be granted against the answering defendants.

**AS AND FOR A FOURTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-FOURTH: The answering defendants, their agents, servants and/or employees did not take part in or direct any of the acts complained of which resulted in plaintiff's alleged damages.

**AS AND FOR A FIFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-FIFTH: Plaintiff's damages were caused and brought about by an intervening and superseding cause and were not caused by the defendants, or by a person or entity for whom the defendants are responsible.

**AS AND FOR A SIXTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-SIXTH: The defendants' liability, if any, to the plaintiff is limited under Article 16 of the Civil Practice Law & Rules of the State of New York.

**AS AND FOR A SEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-SEVENTH: Upon information and belief, plaintiff's economic loss, if any, as specified in §4545 of the CPLR, was or will be replaced or indemnified, in whole or in part, from collateral sources, and the answering defendants are entitled to have the Court consider the same in determining such special damages as provided in §4545 of CPLR.

**AS AND FOR AN EIGHTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-EIGHTH: The answering defendants, pursuant to §1412 of the CPLR, alleges upon information and belief that if the plaintiff sustained any damages at the time and place alleged in the Complaint, such damages were the result of the culpable conduct of the plaintiff because of the plaintiff's negligence or assumption of risk. Should it be found, however, that defendants are liable to the plaintiff herein, any liability being specifically denied, then the defendant demands that any damages that are found to be apportioned among the respective parties according to the degree of responsibility each is found to have in the occurrence, in proportion to the entire measure of responsibility for the occurrence.



**AS AND FOR A NINTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-NINTH: That all risks and dangers of losses connected with the situation alleged in the Complaint were at all times and places mentioned obvious and apparent and were known to the plaintiff and were voluntarily assumed by her.

**AS AND FOR A TENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTIETH: Plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in the Complaint.

**AS AND FOR AN ELEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-FIRST: This court has not acquired in personam jurisdiction over the answering defendants based upon improper service of process.

**AS AND FOR A TWELFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-SECOND: The answering defendants herein claim the benefit of each and every provision of General Obligations Law Section 15-108.

**AS AND FOR A THIRTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-THIRD: The negligence of a third person or entity over whom the answering defendants had no control was a superseding cause and insulates the answering defendant from liability.

**AS AND FOR A FOURTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-FOURTH: Plaintiff knowingly and with intent, destroyed, avoided, or bypassed safety devices, thereby modifying the safety equipment provided and causing her accident.

**AS AND FOR A FIFTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-FIFTH: Plaintiff failed to exercise ordinary care to effect a cure and to prevent aggravation of the alleged injury and damages.

**AS AND FOR A SIXTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-SIXTH: The dangers, if any, alleged in the verified complaint were patent, open and obvious.

**AS AND FOR A SEVENTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-SEVENTH: Plaintiff's own conduct was the sole proximate cause of her alleged accident and injuries.

**WHEREFORE**, the defendants, AMERICAN AIRLINES, INC. and AMERICAN AIRLINES GROUP, INC., demand judgment dismissing the plaintiff's Verified Complaint against it, together with the costs and disbursements incurred in this action.

Dated: New York, New York  
April 14, 2016

Yours, etc.

**RUTHERFORD & CHRISTIE, LLP**

BY: 

David S. Rutherford  
Attorneys for Defendants,  
800 Third Avenue, 9<sup>th</sup> Floor  
New York, New York 10022  
(212) 599-5799

TO: THE BERKMAN LAW OFFICE, LLC  
Attorney for Plaintiff  
111 Livingston Street, Suite 1928  
Brooklyn, NY 11201  
(718) 855-3627  
Attention: Robert J. Tolchin, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the **VERIFIED ANSWER and NOTICE OF DEPOSITION UPON ORAL EXAMINATION**, along with all exhibits attached thereto, were served regular mail to: THE BERKMAN LAW OFFICE, LLC, 111 Livingston Street, suite 1928, Brooklyn, New York 11201 on the 14<sup>th</sup> of April, 2016.

Dated: New York, New York  
April 14, 2016

Yours, etc.

**RUTHERFORD & CHRISTIE, LLP**

BY: 

David S. Rutherford  
Attorneys for Defendants,  
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